

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD S. GLENN, JR.,

Defendant.

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CASE NO. 1:17-cr-00413

ORDER  
[Resolving Doc. [75](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On February 7, 2018, Defendant Richard Glenn, Jr. pleaded guilty to Hobbs Act robbery, bank robbery, and brandishing a firearm during a crime of violence.<sup>1</sup> On June 27, 2018, the Court sentenced him to 324 months in prison.<sup>2</sup>

Defendant Glenn now moves to vacate, set aside, or correct his sentence.<sup>3</sup> The Government filed a motion to dismiss Defendant's motion. The Government argues that the motion to vacate was untimely.<sup>4</sup> The Government did not respond to the merits of Defendant's claims.<sup>5</sup>

For the reasons stated below, the Court **DENIES** the Government's motion to dismiss Defendant's motion.

**I. A One-Year Statute of Limitations Applies to Defendant's § 2255 Motion.**

A one-year statute of limitations beginning when the conviction becomes final

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<sup>1</sup> Doc. [40](#).

<sup>2</sup> Doc. [52](#).

<sup>3</sup> Doc. [72](#).

<sup>4</sup> Doc. [75](#). Glenn opposed the motion to dismiss. Doc. [76](#).

<sup>5</sup> Doc. [75](#) at 3.

applies to § 2255 petitions.<sup>6</sup> In this case, the conviction became final when Defendant's time for seeking a direct appeal expired.<sup>7</sup>

On June 27, 2018 the Court entered judgment in this matter.<sup>8</sup> Two weeks later, on July 11, 2018, Defendant's time for filing a notice of appeal expired, and the judgment became final. One year later, on July 11, 2019, Defendant's time limit for filing his § 2255 motion also expired.

On August 12, 2019, the clerk of court received and filed Defendant's § 2255 motion.<sup>9</sup> The motion itself is not dated.

## **II. Due to the Prison Mailbox Rule, Defendant's Petition Was Timely Filed.**

Under the prison mailbox rule, the motion's filing date is the date on which the prisoner gives prison officials the motion for mailing.<sup>10</sup> "[A]bsent contrary evidence, a prisoner does so on the date he or she signed the complaint."<sup>11</sup>

In the present case, although the Petitioner did not sign the actual petition, on June 27, 2019, he signed the a declaration.<sup>12</sup> He also submitted a declaration with his opposition also stating that he gave it to prison officials on June 27, 2019.<sup>13</sup>

The Government does not offer any evidence to rebut the presumption that Defendant mailed the petition on June 27, 2019.<sup>14</sup>

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<sup>6</sup> 28 U.S.C. § 2255.

<sup>7</sup> *Sanchez-Castellano v. U.S.*, 358 F.3d 424, 427 (6th Cir. 2004) (noting that expiration of deadline for filing notice of appeal makes conviction final).

<sup>8</sup> Doc. 52.

<sup>9</sup> Doc. 72.

<sup>10</sup> *Brand v. Motley*, 526 F.3d 921, 925 (6th Cir. 2008).

<sup>11</sup> *Id.*

<sup>12</sup> Doc. 72-1 at 4.

<sup>13</sup> Doc. 76 at 5.

<sup>14</sup> Doc. 75.

Under the prison mailbox rule, the Court uses the date that Defendant Glenn gave the motion to prison officials- June 27, prior to the July 11, 2019 deadline. Using the date Glenn gave the motion to prison officials, Defendant's § 2255 motion was timely filed.

For the foregoing reasons, the Court **DENIES** the Government's motion to dismiss Defendant's motion. The Government is ordered to reply to the merits of Defendant's § 2255 motion within 45 days of the date of this order.

IT IS SO ORDERED.

Dated: December 19, 2019

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE